



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 6806-99

1 May 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Marine Corps Reserve on 2 January 1977 at the age of 22. Your record reflects that you served a year and nine months without disciplinary incident but on 15 October 1978 you received nonjudicial punishment (NJP) for disrespect and disobedience and were awarded reduction to paygrade E-1.

Your record further reflects that on 29 May 1980 you began a six year period of active duty. Approximately six months later, on 23 December 1980, you received NJP for absence from your appointed place of duty and were awarded a \$100 forfeiture of pay. Shortly thereafter, on 24 April 1981, you received your third NJP for two specifications of disrespect and disobedience. The punishment imposed was reduction to paygrade E-1.

Your record also reflects two periods of authorized absence (UA) totalling 10 days for which you did not received any disciplinary action.

Subsequently, you submitted a written request for an undesirable

discharge in order to avoid trial by court-martial for three periods of absence from your appointed place of duty, assault, and using provoking speech. Your record also reflects that prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was subsequently granted and your commanding officer was directed to issue you an undesirable discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 31 March 1982 you were so discharged.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, and your contention that you would like your discharge upgraded so that you may enroll in a trade school. The Board further considered your contentions that you were a 4.0 Marine who served honorably, and that you did not receive proper legal counsel/representation. However, the Board noted that you submitted no evidence in support of these contentions, and the record contains no such evidence. Additionally, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given the serious nature of your misconduct and your request for discharge to avoid trial for these offenses. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director